The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| JUAN TAJALLE,<br><br>Plaintiff,<br><br>vs.<br><br>CITY OF SEATTLE, SEATTLE PUBLIC LIBRARY, OFFICER SAM 8, a.k.a. JOHN DOE #1, and JOHN DOE #2,<br><br>Defendants. | No. C07 1509TSZ<br><br>DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED<br><br>NOTE ON MOTION CALENDAR 2/8/08 |

## I. INTRODUCTION AND RELIEF REQUESTED

This action arises out of an incident at the Seattle Public Library on June 14, 2006, as a result of which plaintiff Juan Tajalle was excluded from the Library for six months. Tajalle sued the City of Seattle, the Seattle Public Library, and two Library security officers under 42 U.S.C. § 1983, alleging deprivation of the right of free speech and assembly under the First Amendment (First Cause of Action); an unreasonable seizure in violation of the Fourth Amendment (Second Cause of Action); use of unreasonable force under the Fourth Amendment (Third Cause of Action); violation of due process rights under the Fourteenth Amendment

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(Fourth Cause of Action) and municipal liability based on these allegations (Fifth Cause of Action). The complaint also alleges certain state law claims (Sixth Cause of Action, Seventh Cause of Action). As more fully set forth below, the First Cause of Action should be dismissed as to all defendants under Fed. R. Civ. P. 56(c) because it presents no material issues of fact and defendants are entitled to judgment as a matter of law. The Second, Third, Fourth and Fifth Causes of Action should be dismissed as to all defendants under Fed. R. Civ. P.12(b)(6) for failure to state a claim on which relief can be granted. In the absence of any underlying violation of Tajalle's constitutional rights, the security officers should be dismissed as qualifiedly immune to suit. In the absence of federal claims, the Court should exercise its discretion under 28 U.S.C. § 1367(c) to dismiss the state law causes of action as to all defendants.

## II. FACTS

On the afternoon of June 14, 2004, David Adams and Ulysses Rambayon, security officers employed by the Seattle Public Library, were on duty at the security desk near the Library's 4th Avenue entrance.[1] Rambayon Decl., ¶ 2; Adams Decl., Ex. 1. They observed a patron, who they later learned was Juan Tajalle, encounter another patron at the elevators nearby. Tajalle had sneezed loudly, the other patron said, "Gesundheit," and Tajalle blocked the other patron's way, saying, "You fucking with me?" *Id.* The other patron hurried away; Tajalle turned to Adams, sitting at the desk a few feet from the elevators, and shouted, "What are you smiling at?" Adams did not respond, and Tajalle approached the desk agitatedly, put his face close to Adams, and yelled "What are you fucking laughing at?" *Id.* Rambayon asked Tajalle what the problem was, and Tajalle became louder and continued cursing. Rambayon Decl., ¶ 3. Adams then told Tajalle that he was excluded from the library for such conduct, and told him to leave.

[1] The City identifies officers Adams and Rambayon as the Doe defendants named in the complaint. "Sam 8" was Officer Adams' radio call sign.

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Tajalle moved towards the door, but did not exit. Adams Decl., Ex. 1. Rambayon told Tajalle to go outside. Rambayon entered the revolving door ahead of Tajalle, and Tajalle followed. Tajalle entered the same compartment of the door occupied by Rambayon, and caught his backpack between the door and its frame, which caused both men to fall down inside the door. Rambayon Decl., ¶ 3. Rambayon got up, but Tajalle remained on the floor, saying that his arm was broken. *Id.* Adams called 911 for an aid unit, which arrived a few minutes later. Adams Decl., Ex. 1. The Seattle Fire Department Medical Incident Report prepared by the person in charge of the aid unit found no obvious injury. Cowan Decl., Ex. 1.

Adams issued a 14-day exclusion order to Tajalle, which identified "assault/threat of force," "disruptive behavior," "failing to comply with staff request," "harassing behavior," and "misconduct" as the reasons for the exclusion. Adams Decl., Ex. 2. The Notice of Exclusion Order Adams gave to Tajalle states, "You may request an administrative review of exclusion orders in excess of seven days by writing to Administrative Review, 1000 4th Avenue, Seattle, WA 98104-1109, or e-mailing administrative.review@spl.org. Your review request must be sent on or before the 14th calendar day after the date on this notice." *Id.*

On June 23, 2004, Marilynne Gardner, the Chief Financial and Administrative Officer of the Seattle Public Library, wrote to Tajalle, informing him that he was excluded from the Library through December 13, 2006. Her letter stated, "You have the right to request an administrative review of this exclusion by writing to the City Librarian at the above address or by email at administrative.review@spl.org within 14 days of written notification to you of your exclusion." Gardner Decl., Ex. 3. Tajalle made no response to either the Notice of Exclusion of June 14 or the letter of June 23. Gardner Decl., ¶¶ 3,5.

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On January 19, 2007, Tajalle filed a Claim for Damages with the City of Seattle, alleging a reinjury to his arm as a result of the events of June 14, 2006. The City denied the claim on March 9, 2007. Cowan Decl., Ex. 2. The complaint in this action was filed September 27, 2007. Docket #4. Defendants noted their appearance on November 21, 2007, Docket #7, but have not yet answered the complaint.

## III. ARGUMENT AND AUTHORITY

### A. Defendants are entitled to dismissal of all federal claims because plaintiff cannot demonstrate the violation of any right arising under the Constitution or other federal law.

Title 42 U.S.C. §1983 provides a cause of action for violations of "rights, privileges, or immunities secured by the Constitution and [federal] laws" by persons acting under color of state law. *Baker v. McCollan*, 443 U.S. 137, 146, 99 S. Ct. 2689, 2695, 61 L. Ed. 2d 433 (1979). Municipalities are "persons" subject to suit under the statute where the violation alleged was a direct consequence of a specific policy of the municipality. *Monell v. Dep't. of Social Services,* 436 U.S. 658, 691-4, 98 S.Ct. 2018, 2036-38, 56 L.Ed.2d 611 (1978). Individual defendants enjoy a qualified immunity to suits under § 1983. *Kennedy v. City of Ridgefield*, 411 F.3d 1134, 1141 (9th Cir. 2005). The City and the individual officers are entitled to the relief sought on this motion because Tajalle cannot demonstrate that he suffered the constitutional injuries he alleges, regardless of what policies the City may or may not have in place.[2]

#### 1. Plaintiff's First Cause of Action should be dismissed under Fed. R. Civ. P. 56(c) because the undisputed facts fail to disclose defendants' intent to deter or chill plaintiff's right of free speech.

On a motion under Rule 56(c), summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

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[2] The City concedes that the Library is an agency of the City of Seattle, and that the security officers were employees of the Library, acting within the authority conferred by RCW 27.12.290 to exclude persons who violate Library rules.

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The moving party bears the initial burden of demonstrating the absence of issues of fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d. 265 (1986). Once that burden has been met, the opposing party must show that there are genuine issues for trial by presenting significant and probative evidence in support of its claims. *Intel Corp. v Harford Accident and Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). In addressing the motion, the court must draw all inferences from the admissible evidence in the light most favorable to the non-moving party. *Addisu v. Fred Mayer, Inc.*, 198 F.3d 1130, 1134 (9th Cir., 2000). However, conclusory or speculative allegations are insufficient to raise genuine issues of fact. *King v. Idaho Funeral Serv. Ass'n.*, 862 F.2d 744, 746 (9th Cir. 1988).

Tajalle attributes his exclusion from the Library to the officers' provoking "an altercation" with him after he observed them "getting in an argument with another Library patron." Complaint, ¶¶ 8-9. He states he "started watching the incident and indicated to the officers by approaching them his disapproval of their treatment of the patron." *Id.*, ¶ 8. The complaint alleges that "the Library issued an exclusion order to retaliate against the plaintiff for his protesting of the wrongful actions of the defendants." *Id.*, ¶ 13. It further alleges that plaintiff has a "federally-protected right, under the freedom of speech and assembly provisions of the United States Constitution … to indicate through his words and/or non-violent actions that the defendants were unfair in their treatment of both himself and another citizen." *Id.*, ¶16. These allegations do not show an invasion of Tajalle's right of free speech.

Governmental action "designed to retaliate against and chill political expression strikes at the heart of the First Amendment." *Gibson v. United States*, 781 F.2d 1334, 1336 (9th Cir. 1986). To demonstrate such violation, a plaintiff must provide evidence that the government "deterred or chilled [the plaintiff's] political speech and that such deterrence was a substantial or

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motivating factor in the [defendant's] conduct." *Mendocino Environmental Center v. County of Mendocino*, 192 F.3d 1283, 1300 (9th Cir. 1999). Thus, the *intent* to inhibit speech is an element of a claim of violation of First Amendment rights. *Id.* For this reason, a First Amendment claim cannot be based on a speculative "chill" perceived in legitimate law enforcement activities. *Gibson, supra,* at 1338. There is no dispute that Tajalle was told to leave the Library, and that he was issued exclusion orders, first at the scene, and later by mail. However, summary judgment is appropriate because Tajalle cannot demonstrate that the exclusion manifests the Library's intent to interfere with his right of free speech.

The intent to inhibit speech can be shown either by direct or circumstantial evidence. *Mendocino Environmental Center, supra*, at 1301. Neither is present here. For one thing, Tajalle's allegations are vague with respect to the event he alleges as precipitating his exclusion from the Library. He observed the officers "getting into an argument" with another patron, but he states no facts showing that the officers were aggressive or belligerent towards the other patron, that they used force, or that their conduct was otherwise so unreasonable as to warrant a protest. Tajalle's allegation that the officers were treating the other patron "unfairly" is thus conclusory. Moreover, the complaint fails to allege that Tajalle said anything at that point, making it impossible to conclude that Tajalle's "approaching" the officers was protected political speech. The allegation that "as a result" of plaintiff's "protest" the officers "attempted to provoke an altercation with the plaintiff" is speculative because the complaint states no facts from which either a provocation or the officers' motivations can be inferred.

On the other hand, declarations by both officers show that it was their intent to enforce the Library's Rules of Conduct, not to deprive Tajalle of any rights. Those rules forbid, among other things, "verbally or physically threatening or harassing other patrons," "creating disruptive

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noises, such as loud talking [or] screaming," and "failing to comply with a reasonable staff request." Gardner Decl., Ex. 4. Officer Rambayon states that he observed Tajalle blocking the other patron's way and shouting obscenities at him. Rambayon Decl., ¶ 2. Officer Adams wrote in his report that Tajalle "got into my face and yelled, 'What are you fucking laughing at?'" Adams Decl., Ex. 1. According to Rambayon, it was that conduct which precipitated the exclusion of Tajalle: "Officer Adams and I asked Tajalle to leave the Library because he violated the Library's Rules of Conduct by using loud, abusive, and obscene language. During the encounter with Tajalle, I observed him to exhibit aggressive and threatening behavior towards a patron and towards Officer Adams and myself. My intent in asking Tajalle to leave the Library was to enforce the Rules of Conduct. It was not my intent to deprive Tajalle of his right to use the Library, or of any other right." Rambayon Decl., ¶ 5. Adams states, "At the time of the events described in my report, it was my intent to enforce the Library's Rules of Conduct. Mr. Tajalle was asked to leave the Library because his behavior violated the Rules, in my judgment. It was not my intent to deprive Mr. Tajalle of any right he has under the law." Adams Decl., ¶ 2.

The Seattle Public Library is a limited public forum which may properly impose reasonable viewpoint-neutral restrictions on patrons' First Amendment rights. See *Faith Center Church Evangelistic Ministries v. Glover*, 480 F.3d 891, 908 (9th Cir. 2007), fn. 8, *citing Kreimer v. Bureau of Police of Morristown,* 958, F.2d 1242 (3rd Cir. 1992) (A Library's narrowly-tailored, content-neutral regulations limiting First Amendment activities are legitimate time, place and manner restrictions.) The Library's Rules of Conduct are a set of regulations designed to "protect the rights and safety of Library patrons, volunteers, and staff, and for preserving and protecting the Library's materials, equipment, facilities, and grounds." Gardner Decl., Ex. 4. They are also designed to enhance the Library's commitment to intellectual

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freedom and to freedom of access to information. *Id.*, ¶ 6. Verbal abuse or harassment of patrons, volunteers and staff, and disruptive noises such as loud talking or screaming are forbidden because such conduct is antithetical to this commitment. To the extent that the Rules restrict First Amendment rights, they are plainly content-neutral and narrowly-tailored to achieve legitimate goals.

The complaint states no facts from which the court may infer a nexus between the officers' enforcement of these rules and an intent to chill Tajalle's right of free speech. Conclusory allegations about actions that are not plainly unlawful are insufficient to establish a genuine issue of material fact. See *Browne v. Gosset*, 2006 WL 213732 *9 (N.D.Cal. 2006). Accordingly, defendants are entitled to summary judgment of dismissal of plaintiff's First Cause of Action as a matter of law.

**2. Plaintiff's Second, Third, and Fourth Causes of Action should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state claims upon which relief may be granted.**

The sole issue raised by a motion to dismiss under Rule Fed. R. Civ. P.12(b)(6) is whether the facts pleaded, if established, would support the relief sought. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696,699 (9th Cir. 1990). All allegations of material fact are taken as true, and construed in the light most favorable to the plaintiff. *Tanner v. Heise*, 879 F.2d 572, 576 (9th Cir.1989). But liberal construction of the complaint does not mean that argumentative conclusions are to be accepted as true facts. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) (court will not accept truth of legal conclusions merely because they are cast in the form of factual allegations). Accepting as true, for the purposes of this motion, all *properly* pled allegations of the complaint's Second, Third, and Fourth Causes of Action, plaintiff nonetheless fails to allege facts that state claims entitling him to relief.

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Shorn of its argumentative, speculative, and conclusory language, the complaint states the following facts pertinent to this motion:

- "Plaintiff is a disabled person" ¶7
- "On or about June 14th, 2006, the plaintiff was in the Seattle Public Library when he observed Officer Sam 8 aka John Doe #1 and John Doe #2 getting into an argument with another Library patron. Plaintiff started watching the incident and …approach[ed] them…" ¶8
- "[the officers]…attempted to remove the plaintiff from the premises" ¶9
- "the two officers attempted to remove the plaintiff from the Library" ¶10
- "When the officers reached the door, the plaintiff complained that he was disabled and would have a hard time going through the revolving door" ¶10
- "the defendants demanded that he go through the door anyway" ¶10
- "…the plaintiff got trapped in the revolving door and fell" ¶10
- "..after being trapped, the plaintiff was injured …" ¶11
- "When the plaintiff attempted to get some medicine from his backpack, John Doe #2 kicked away his backpack …" ¶12
- "Subsequent to that, the Library issued an exclusion order…"¶13

Assuming, for the purposes of this motion, that these facts are true, they nonetheless fail to state that Tajalle was seized, within the meaning of the Fourth Amendment, or that his right of due process under the Fourteenth Amendment was violated.

**(a) The complaint does not allege a seizure, within the meaning of the Fourth Amendment.**

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." It should go without saying that to determine whether a seizure is unreasonable, it is necessary to demonstrate that a seizure has, in fact, taken place. This only occurs "when the

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officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen…". *Terry v. Ohio,* 392 U.S. 1, 19 n. 16, 88 S. Ct. 1868, 1879, 20 L. Ed. 2d 889 (1968). Such restraint exists "only if in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall,* 446 U.S. 544, 554, 100 S. Ct. 1870, 1877, 64 L. Ed. 2d 497 (1980).

The facts alleged in the complaint fail utterly to show that Tajalle was seized by the officers. There is no allegation that he was physically restrained or that his freedom of movement was impaired in any way. There is no allegation that the officers brandished weapons, called the police, or detained Tajalle in anticipation of an arrest by, for example, handcuffing him. On the contrary, the complaint makes it amply clear that that the officers were attempting to get Tajalle *out* of the Library and onto the public sidewalk. No reasonable person in Tajalle's position would think that he was not free to leave. See *U.S. v. Arias-Villanueva*, 998 F.2d 1491, 1501 (9th Cir. 1993) (no seizure where the defendants were not pulled over, were in a public place, and were not handcuffed); *U.S. v. Brown*, 884 F.2d 1309, 1311 (9th Cir. 1989) (no seizure where officers approached plaintiff in public, did not display weapons, touch him, or restrain him in any way.)

The Second Cause of Action should be dismissed for failing to state facts showing that a seizure in violation of the Fourth Amendment occurred. The Third Cause of Action, alleging violation of the Fourth Amendments' prohibition of unreasonable force during a seizure, should be dismissed *a fortiori*.

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**(b) No facts are alleged stating a violation of plaintiff's right of due process under the Fourteenth Amendment.**

The due process clause of the Fourteenth Amendment protects individuals against governmental deprivations of life, liberty, and property without due process of law. "[T]he touchstone of due process is protection of the individual against arbitrary action of government." *County of Sacramento v. Lewis*, 523 U.S. 833, 845, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998). The Amendment affords substantive due process protection against the illegitimate exercise of state power, and a procedural due process guarantee of fundamental fairness. *Id.* at 845-46, 118 S. Ct. at 1716. Here, Tajalle fails to allege an invasion of either of these protected interests.

**(i.) The officers' conduct, as alleged, does not shock the conscience.**

As a threshold matter, "[t]o establish a substantive due process claim a plaintiff must ... show a government deprivation of life, liberty, or property." *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998). Such claim can be stated through allegations that the action was "arbitrary and irrational and had no relationship to a legitimate government objective." *City of Los Angeles v. McLaughlin*, 865 F.2d 1084, 1088 (9th Cir.1989). The essential inquiry is "whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *County of Sacramento v. Lewis*, *supra*, at 847, fn. 8, 118 S. Ct. at 1717. Allegations of mere tortious conduct are insufficient to meet this standard. *Collins v. City of Harker Heights*, 503 U.S. 115, 128, 112 S. Ct. 1060, 1070, 117 L. Ed. 2d 261 (1992).

Whether a defendant's conduct "shocks the conscience" is question of law. *Hayes v. Faulkner Cy.*, 388 F.3d 669, 674-75 (8th Cir. 2004); *Armstrong v. Squadrito,* 152 F.3d 564, 581 (7th Cir.1998); *Benn v. Universal Health System, Inc.*, 371 F.3d 165, 174 (3d Cir. 2004). The

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Ninth Circuit has long held in criminal cases that whether police conduct has violated the due process clause is a question for the court, not the jury. *United States v. Wylie,* 625 F.2d 1371, 1378 (9th Cir.1980) ("The question of the outrageous involvement of government agents is a question of law for the court."); *United States v. Ramirez,* 710 F.2d 535, 539 (9th Cir.1983) ("The existence of police misconduct that contravenes constitutional due process is a question of law."). Here, the complaint states no facts that shock the conscience as a matter of law.

Tajalle alleges merely that there was a confrontation between him and the security officers, following which the officers asked him to leave the premises, and that while he was leaving, he fell inside the revolving door, injuring himself. There is no allegation that the officers used excessive force, or, indeed, that they touched Tajalle at all. He states he is disabled, but the nature of the disability is not described, and thus there are no facts showing why the order to go through the revolving door would have been outrageous under the circumstances. Nothing in the officers' conduct, as alleged, comes close to behavior that shocks the conscience as a matter of law. Construed in the light most favorable to Tajalle, the complaint might conceivably be read to allege a tort, but widely misses the mark for a substantive due process violation.[3]

**(ii.) The Library's provision of a post-exclusion hearing satisfies procedural due process requirements.**

The Fourteenth Amendment's requirement of procedural due process imposes constraints on governmental decisions which would invade protected liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). Free access to a public library is a protected liberty interest. See *Wayfield v. Town of Tisbury*, 925 F. Supp. 880 (D.

[3] Comparison with *London v. Directors of DeWitt Public Schools*, 194 F.3d 873, 876 (8th Cir. 1999) is instructive. There, a teacher, while forcibly dragging a rowdy student out of a school, banged the student's head against a pole. The Eighth Circuit did not think the teacher's conduct shocking to the conscience, and no substantive due process violation was found.

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Mass. 1996); *Grigsby v. City of Oakland*, 2002 WL 1298759 *3 (N.D.Cal. 2002). However, Tajalle's procedural due process claim should be dismissed because it fails to allege a deprivation of this right.

Due process generally requires the opportunity for some kind of hearing before the government may deprive a citizen of an interest protected by the Fourteenth Amendment. *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1317 (9th Cir. 1989). But the government must also be allowed to act promptly to prevent harm to the public. *Cassim v. Bowen*, 824 F.2d 791,797, fn.2 (9th Cir. 1987). In such cases, the availability of a hearing *after* a protected interest is implicated will comply with due process requirements . *Parratt v. Taylor,* 451 U.S. 527, 539, 101 S. Ct. 1908, 1915, 68 L. Ed. 2d 420 (1981) ("either the necessity of quick action by the State or the impracticality of providing any meaningful predeprivation process, when coupled with the availability of [post-deprivation procedures], can satisfy the requirements of procedural due process"). While it is true that Tajalle was deprived of access to the Library, the complaint fails to allege either that (a) a pre-deprivation hearing was practical under the circumstances, but that Tajalle was not afforded one, or (b) he was denied a post-deprivation hearing. The complaint thus fails to state facts showing that he was denied procedural due process.

In fact, the Library has in place procedures for the administrative review of exclusion orders for periods longer than seven days. These procedures are set forth in the Guidelines for Excluding Individuals from the Seattle Public Library. Gardner Decl., Ex. 5. The Guidelines specifically address the due process rights of affected individuals by identifying the grounds for issuance of exclusion orders and the persons authorized to issue such orders; provide for written requests for reviews of exclusion orders; and set forth procedures for successive review by the

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City Librarian and by the Library Board. Tajalle was given notice of the Library's review procedures on two occasions. The first was the day of the incident itself, when the Notice of Exclusion Order given to him at the scene informed him, "You may request an administrative review of exclusion orders in excess of seven days by writing to Administrative Review, 1000 4th Avenue, Seattle, WA 98104-1109, or e-mailing administrative.review@spl.org. Your review request must be sent on or before the 14th calendar day after the date on this notice." Adams Decl., Ex. 2. The second time was by the Library's letter of June 23, 2004, giving notice that Tajalle was excluded from the Library for six months, which likewise stated, "You have the right to request an administrative review of this exclusion by writing to the City Librarian at the above address or by email at administrative.review@spl.org within 14 days of written notification to you of your exclusion." Gardner Decl., ¶ 5. Tajalle did not avail himself of the hearing process on either of these occasions. *Id.*, ¶¶ 3, 5.[4]

**3. The absence of constitutional violations precludes municipal liability under § 1983, and confers a qualified immunity on the security officers.**

As noted above, municipalities are subject to suit under § 1983 where some official policy results in the violation of an individual's constitutional rights. *Monell, supra*, 436 U.S. at 691, 98 S. Ct. at 2036 (1978). However, the first of several requirements necessary to demonstrate municipal liability is that the injury alleged must amount to a constitutional deprivation. *Jackson v. Gates,* 975 F.2d 648, 654 (9th Cir. 1992), citing *St. Louis v. Praprotnik*,

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[4] Consideration of the Library's review procedures does not invoke Rule 12(c), which requires a 12(b)(6) motion to be converted into a motion for summary judgment when matters outside the pleadings are presented to the court. An exception to that requirement allows the court to take judicial notice of matters of public record without such conversion. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir, 2001). The "Guidelines for Excluding Individuals from the Seattle Public Library" are part of the Library's Administrative Procedure, a compilation of governing policies, available for public inspection. Gardner Decl., ¶ 7. The Guidelines are thus a public record, within the meaning of RCW 42.56.010(2) and 42.56.070(3)(b), and may be properly considered by the Court on a Rule 12(b)(6) motion to dismiss.

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485 U.S. 112, 121, 108 S. Ct. 915, 923, 99 L. Ed. 2d 107 (1988) (§1983 will not impose liability unless the government causes a deprivation of constitutional rights); see also *Jamison v. Storm*, 426 F. Supp. 2d 1144, 1158 (W.D. Wash. 2006) (with no showing of a constitutional violation there is no municipal liability under § 1983). As discussed, Tajalle does not allege facts showing that the officers' conduct rose to the level of the constitutional violations alleged in the complaint. Accordingly, the Fifth Cause of Action should be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

The absence of constitutional violations similarly confers on the security officers a qualified immunity to suit under § 1983. Where a claim of violation of constitutional rights by law enforcement officers is brought under the statute, this defense is available when an officer reasonably misapprehends the law governing the circumstances of the case. *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S. Ct. 596, 599, 160 L. Ed. 2d 583 (2004) (per curiam). But the initial inquiry is whether the facts, taken in the light most favorable to the party asserting the injury, show that an officer's conduct violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct. 2151, 2156, 150 L. Ed. 2d 272 (2001). This is a question of law, absent issues of material fact. *Act Up!/Portland v. Bagley,* 988 F.2d 868, 872 (9th Cir. 1993). If the facts fail to show a constitutional violation, the inquiry ends, and the immunity obtains. *Saucier*, *supra,* at 194, 121 S. Ct. at 2156; see also *Kennedy v. City of Ridgefield*, *supra*, 411 F.3d at 1141. ("If the court determines that the conduct did not violate a constitutional right, the inquiry is over and the officer is entitled to qualified immunity.") The officers in this action are therefore immune to suit, and all claims against them should be dismissed.

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### B. The dismissal of plaintiff's federal causes of action deprives the Court of supplemental jurisdiction of his state law claims.

In addition to the constitutional violations alleged in the complaint, plaintiff makes certain claims under Washington law. The Sixth Cause of Action, styled "Negligence," alleges a duty arising under RCW 49.60, and the Seventh Cause of Action alleges that defendants denied Tajalle access to a place of public accommodation on the basis of his physical disability, in violation of RCW 49.60.215. Assuming this states causes of action for common law negligence and violation of Washington's Law Against Discrimination, Chap. 49.60 RCW, the Court should exercise its discretion to dismiss them under 28 U.S.C. § 1367(c).

As a codification of the district court's supplemental jurisdiction over pendent state law claims, §1367 confers the discretion to decline the exercise of jurisdiction. *Executive Software North America v. U.S. District Court for the Central District of California*, 24 F.3d 1545, 1555 (9th Cir. 1994). Subsection (c) provides, in pertinent part,

> The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--
> ...
> (3) the district court has dismissed all claims over which it has original jurisdiction...

The primary reason for a district court to retain jurisdiction of pendent state law claims following dismissal of federal claims is deference to judicial economy. See *Schneider v. TRW, Inc.*, 938 F.2d 986, 994 (9th Cir. 1991), and cases cited. Thus, if litigation had progressed to the point that it would be wasteful to require the parties to duplicate their efforts in state court, it would not be inappropriate for the state claims to proceed in district court. However, no such consideration should apply where, as here, the matter is still at the pleading stage. Accordingly, with the dismissal of Tajalle's constitutional claims, the Court should exercise its discretion to decline supplemental jurisdiction of his state law causes of action.

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## IV. CONCLUSION

For the reasons discussed above, defendants ask the this action be dismissed in its entirety.

Respectfully submitted this 9th day of January, 2008.

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